

IT 95-49

Tax Type: INCOME TAX

Issue: Income Earned in Illinois/Individual Residency

STATE OF ILLINOIS
DEPARTMENT OF REVENUE
OFFICE OF ADMINISTRATIVE HEARINGS
CHICAGO, ILLINOIS

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DEPARTMENT OF REVENUE      )  
STATE OF ILLINOIS          )  
                             ) SS#  
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                             ) v.  
                             ) Mimi Brin  
XXXXXX                     ) Administrative Law Judge  
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RECOMMENDATION FOR DISPOSITION

SYNOPSIS: This matter is before this administrative tribunal as a result of a timely protest by XXXXX (hereinafter referred to as the "Taxpayer") to a Notice of Deficiency (hereinafter referred to as the "Notice") issued to him on March 13, 1995. The basis of this Notice is the Illinois Department of Revenue's (hereinafter referred to as the (Department) determination that taxpayer had failed to pay and file an Illinois income tax return for the years ending December 31, 1986 through December 31, 1991 (hereinafter referred to as the "Tax Years") The Notice assessed tax, various penalties and interest for income earned those years.

The Department's information concerning this taxpayer's income for the tax years stems from the Federal Internal Revenue Service and its report to the Department based upon the taxpayer's filing of Federal Income Tax returns for the tax years. In his letter of protest, the taxpayer avers that his Federal tax returns for the tax years showed incorrect adjusted gross income, and that the taxpayer would rectify the errors. While the taxpayer did not appear at the hearing set in this matter, he did deliver to me what appear to be revised Federal Income Tax returns for the tax years which are stamped as being received by the Internal Revenue Service on May 23, 1995. He also provided me with Illinois Income Tax returns for

the tax years. Therefore, I shall make my recommendation based upon the documents before me.

The issue before me is whether the taxpayer successfully rebuts the prima facie correctness of the Department's Notice of Deficiency. Based upon the documents before me, it is my recommendation that the issue be resolved in the Department's favor.

FINDINGS OF FACT:

1. The Department's prima facie case, inclusive of all jurisdictional elements, is established by the admission into evidence of the Notice of Deficiency showing a proposed total liability of \$5,563.00 inclusive of interest calculated through March 13, 1995 for the tax years ending December 31, 1986 through December 31, 1991. Dept. Ex. No. 1

2. The bases of the Department's Notice were the Federal income tax returns filed by the taxpayer for the tax years. Department Group Ex. 3

3. Taxpayer, an Illinois resident at all pertinent times, failed to pay or file Illinois income tax returns for the tax years. Dept. Ex. No. 1

4. Taxpayer filed amended income tax returns with the Internal Revenue Service for the tax years on May 23, 1995, for amounts different from his original filings. Taxpayer Group Ex. 1; Taxpayer Protest

5. Taxpayer presented Illinois income tax returns for the tax years to this administrative law judge on May 24, 1995, with the amounts reflected therein being based upon the amounts appearing on his revised Federal income tax returns. Taxpayer Group Ex. 1, 2

CONCLUSIONS OF LAW: The Illinois Income Tax Act, 35 ILCS 5/101 et seq. provides, in pertinent part:

904 Deficiencies and Overpayments.

(b) No return filed. If the taxpayer fails to file a tax return, the Department shall determine the amount of tax due according to its best judgment and information, which amount so fixed by the Department shall be prima facie correct and shall be prima facie

evidence of the correctness of the amount of tax due. The Department shall issue a notice of deficiency to the taxpayer which shall set forth the amount of tax and penalties proposed to be assessed.

35 ILCS 5/904(b)

There is no question that the taxpayer did not pay or file any Illinois income tax returns for the tax years although he was required to do so. Therefore, the penalties proposed by the Department for failure to file and pay are appropriate.

There is also no question that the bases for the Department's Notice of Deficiency were the Federal income tax returns filed by the taxpayer. The question is whether the revised Federal returns which this taxpayer just recently filed with the Internal Revenue Service are sufficient to rebut the prima facie correctness of the Notice of Deficiency. I do not believe that the revised returns are sufficient, for they may not be accepted, in whole or in part, by the Internal Revenue. And, the taxpayer failed to provide the Department with any support documentation, such as W-2 information, which would substantiate the differences in the amounts reported in the various filings. I note that should the Internal Revenue Service accept taxpayer's revised filings and reduce his liability accordingly, the taxpayer can notify the Department for the appropriate adjustment.

Wherefore, for the reasons stated above, it is my recommendation that the Notice of Deficiency at issue herein be finalized as issued.

Mimi Brin
Administrative Law Judge